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From: Macchiarella, Thomas L CIV OASN (I&E) BRAC PMO West

Sent: Thursday, October 16, 2008 9:26

To: Larson, Elizabeth A CIV OASN (I&E) BRAC PMO West

**Subject:** FW: Draft ETCA for Hunters Point

Follow Up Flag: Follow up Flag Status: Flagged

From: Macchiarella, Thomas L CIV OASN (I&E) BRAC PMO West

Sent: Wednesday, September 10, 2008 12:48

To: Michael Cohen; 'Amy Brownell'

Cc: Callaway, Rex CIV NAVFAC SW; Liotta, Rita M CIV WEST Counsel; Cummins, John M CIV NAVFAC SW; Forman, Keith S CIV OASN

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**Subject:** Draft ETCA for Hunters Point

### Amy and Michael,

Attached please find the Navy's draft ETCA for Hunters Point. When we meet on Monday, let's setup a future meeting to discuss the ETCA and comments that you may have.

We know of a few small items that need to be tidied and added, but the document is ready for your review. As you know, we plan to make progress on this ETCA with you prior to submitting it to the regulatory agencies.

### --Thomas M.



### Thomas L. Macchiarella

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### **NAVY DRAFT**

August 28, 2008

### EARLY TRANSFER COOPERATIVE AGREEMENT COVERING PORTIONS OF HUNTERS POINT NAVAL SHIPYARD

### **BETWEEN**

### THE UNITED STATES OF AMERICA DEPARTMENT OF THE NAVY AND THE SAN FRANCISCO REDEVELOPMENT AUTHORITY, SAN FRANCISCO, CALIFORNIA

Cooperative Agreement Number N62474-XX-X-XXXX

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Complete List of Appendices
To be prepared by Navy. Will be provided in future draft.

### **APPENDICES**

Appendix 1	Map of the Hunters Point Naval Shipyard
Appendix 2	Map of the ACES
Appendix 3	Known Conditions
Appendix 4	<b>Environmental Insurance Polices</b>

## EARLY TRANSFER COOPERATIVE AGREEMENT COVERING PORTIONS OF HUNTERS POINT NAVAL SHIPYARD BETWEEN THE UNITED STATES OF AMERICA DEPARTMENT OF THE NAVY AND THE SAN FRANCISCO REDEVELOPMENT AUTHORITY, SAN FRANCISCO, CALIFORNIA

### **GENERAL PROVISIONS**

This Early Transfer Cooperative Agreement ("Agreement") is made by and between the United States of America, acting by and through Naval Facilities Engineering Command ("Navy") and the San Francisco Redevelopment Authority, San Francisco, California ("Authority") recognized as the local redevelopment authority by the Office of Economic Adjustment on behalf of the Secretary of Defense and is also a local public authority legally empowered to enter into this Agreement.

The Federal Government, for and on behalf of the citizens of the United States of America, acts as the steward of certain real property on which it operates and maintains military facilities necessary for the defense of the United States of America. Certain military facilities are no longer required for that mission, and, in accordance with statutory authority, the Department of Defense ("DOD") closed and plans to dispose of real and personal property at those facilities. The Navy is authorized to dispose of real and personal property on Hunters Point Naval Shipyard, to the City of San Francisco or to a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended by Section 2834 of the National Defense Authorization Action Act for Fiscal Year 1994 (Public Law 103-160). The Authority is a local reuse organization approved by the City of San Francisco to accept conveyance of Hunters Point Naval Shipyard property in accordance with the authorities set out above.

Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. Section 9620(h)(3)(C), Federal property may be transferred prior to the completion of all remedial action necessary to protect human health and the environment. Under this early transfer authority, the Navy intends to convey title to the portion of Hunters Point Naval Shipyard property known as the Area Covered by Environmental Services (hereinafter "ACES"), to the Authority. The ACES is defined in Section 222 below and shown in Appendix 2. The Authority assumes responsibility for certain environmental response activities (hereinafter the "Environmental Services," as defined in Section 211 below). The principal purpose of this Agreement is to facilitate early transfer and redevelopment by providing the vehicle under which the Authority will perform the Environmental Services in the ACES.

It is in the public interest and will be beneficial to the Navy and the Authority for the Authority to cause to be performed the Environmental Services at the ACES. This Agreement does not supercede the Navy's obligations under CERCLA in the event the Authority fails to comply with enforceable agreements with USEPA and the State of California for cleanup of the ACES and primary responsibility for compliance with CERCLA in the ACES subsequently defaults to the Navy. These responsibilities as between the parties are set forth below in Section 711 of this Agreement.

This Agreement benefits the Navy and the Authority because it facilitates early transfer and immediate reuse by allowing the Authority to cause to be performed certain environmental remediation activities and simultaneously facilitates redevelopment as defined herein. This Agreement, executed as part of an early transfer, facilitates provision to the Authority of access and control in conjunction with implementation of the Authority's reuse plan. In addition, early transfer will allow the Navy to convey title in compliance with CERCLA requirements at an earlier date than could otherwise be achieved. This Agreement is a Cooperative Agreement within the meaning of 31 U.S.C. Section 6305 and 10 U.S.C. Section 2701(d)(1).

In accordance with 42 U.S.C. 9620 (h)(3)(C)(iii), after all remedial action necessary to protect human health and the environment with respect to any substances remaining on the ACES on the date of transfer has been taken, the Navy will deliver to the Authority an appropriate document containing a warranty that all necessary response action has been taken.

The Navy and the Authority have entered into this Agreement for the purpose of establishing the terms and conditions necessary to obtain Regulatory Closure for the ACES and ensure the execution of Long-Term Obligations associated with Regulatory Closure. The Navy agrees to provide funds to the Authority in accordance with and subject to the provisions of this Agreement and to undertake and complete its obligations under Section 302 hereof. The Authority agrees to perform the Environmental Services in accordance with and subject to the provisions of this Agreement.

### Article I SCOPE AND PURPOSE

Section 101. Performance of Environmental Services

The Authority shall cause to be performed the Environmental Services in accordance with and subject to the provisions of this Agreement. The Environmental Services, to the extent required to be performed under this Agreement, shall satisfy the requirements of CERCLA for the ACES as provided for in the CERCLA RODS and petroleum Corrective Action Plans (CAPs).

The Navy shall remain responsible for, if any, Navy Obligations.

Section 102. Performance Method

The CERCLA RODS and CAPs establish the process for obtaining Regulatory Closure within the ACES. By the execution of this Agreement, the Navy concurs with the process set forth in the CERCLA RODS and CAPs, and all documents and approvals referenced therein.

### Article II DEFINITIONS

Section 201. Cooperative Agreement

The term "Agreement" means this Cooperative Agreement.

Section 202. Navy's Representative

The Navy's representative for execution purposes is Naval Facilities Engineering Command, which is responsible to the office of the Secretary of the Navy for environmental remediation within the ACES, or its successor.

Section 203. Authority

The term "Authority" means the San Francisco Redevelopment Authority, a Redevelopment Authority of the State of California, recognized as the local redevelopment authority for the Hunters Point Naval Shipyard by the Office of Economic Adjustment on behalf of the Secretary of Defense. The Authority is an entity that is within the meaning of the term "local government agency" as such term is used in 10 USC Section 2701(d)(1), with which the Navy is entitled to enter into "agreements on a reimbursable or other basis".

Section 204. Hunters Point Naval Shipyard

The term "Hunters Point Naval Shipyard" means the entirety of the real property at the former Hunters Point Naval Shipyard, shown on the map attached as Appendix 1 and incorporated herein by reference.

Section 205. Rerserved

Section 206. Navy-Retained Conditions

The term "Navy-Retained Conditions" means any condition associated with Unexploded Ordnance; Military Munitions; chemical, radiological or biological warfare agents; Radiological Materials; and Unknown Uninsured Conditions. "Navy Retained Conditions" do not include radionuclide hazardous substances discovered by the Authority or its successors during the course of excavation into or disturbance of a CERCLA cap/cover containment remedy, whether or not such excavation or disturbance is pursuant to an approved Risk Management Plan or CERCLA Institutional Control ("IC") review and approval procedure

Section 207. CERCLA RODS

The term "CERCLA RODS" means the CERCLA Record of De	ecision for Parcel B dated
, the CERCLA Record of Decision for Parcel G dated	, and the CERCLA
Record of Decision for Parcels UC-1 and D-1 dated	

Section 208. Regulatory Closure

The term "Regulatory Closure" means approval or certification of completion of any necessary remedial or corrective action or issuance of a "No Further Action" letter or equivalent finding by the appropriate Environmental Regulatory Agency or Agencies pursuant to the statutes and regulations administered by those Agencies.

Section 209. Navy and Government

The terms "Navy" and "Government" are used interchangeably herein.

Section 210. Long-Term Obligations

The term "Long-Term Obligations" means any long-term review, monitoring, reporting and operation and maintenance requirements that are required in support of Regulatory Closure.

Section 211. Environmental Services

The term "Environmental Services" means activities with respect to Known Conditions and Unknown Insured Conditions necessary to obtain Regulatory Closure, and to provide for the performance of associated Long-Term Obligations. Environmental Services do not include the performance of Ineligible Work as defined in Section 218 below.

Section 212. Known Conditions

The term "Known Conditions" means those environmental conditions set forth in Appendix 3 to this Agreement and includes "Reasonably Expected Environmental Conditions" as defined herein. The term "Known Conditions" does not include "Navy-Retained Conditions" as defined above.

### Section 213. Unknown Insured Conditions

The term "Unknown Insured Conditions" means those environmental conditions in the ACES that are not Known Conditions and for which, and to the extent, the Authority is insured and paid pursuant to the Environmental Insurance Policies. This term also includes a specific Unknown Condition that otherwise would have been an Unknown Insured Condition but coverage was denied by the insurance provider solely due to the failure of the Authority or named insured to comply with any Environmental Insurance requirements as set forth in the Environmental Insurance Policies . The inclusion of such Unknown Condition shall be limited to the specific costs which would have been funded

by the Environmental Insurance Policies but for such failure of the Authority or the named insured.

### Section 214. Unknown Uninsured Conditions

The term "Unknown Uninsured Conditions" means those environmental conditions in the ACES that are not Known Conditions and are not Unknown Insured Conditions. This term does not include any Unknowns for which the Authority or named insured is not paid by the Environmental Insurance because of any dishonest, fraudulent, specifically intentional or malicious act or those of a knowingly wrongful nature, or the intentional, willful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order, or instruction of any government agency or body by or at the direction of an insured party. The term also does not include any naturally occurring substance on, at, under, or coming from the ACES, in its unaltered form, or altered solely through natural occurring processes or phenomena.

### Section 215. Radiological Materials

The term "Radiological Materials" means solid, liquid, or gaseous material derived from U.S. Government activities, that contains radionuclides regulated by the Atomic Energy Act of 1954, as amended, and those materials containing radionuclides defined as being derived from the Navy's work on the following: nuclear propulsion plants for ships and submarines; nuclear devices and nuclear components thereof, and; radiographic and instrument calibration sources and various instrumentation and radioluminescent products manufactured for military applications. Notwithstanding any statutory definitions, the term "Radiological Materials" does not include radioluminescent dials. The term "Radiological Materials" also does not include products manufactured for non-military applications such as radioluminescent signs, tungsten welding electrodes, household smoke detector components, and radioluminescent devices such as radium painted gauges, radium buttons, and strontium buttons.

### Section 216. Environmental Insurance Policies

The term "Environmental Insurance Policies" means the environmental insurance policy(ies) issued and approved pursuant to Section 302.B and meeting the requirements of Section 712 below (attached as Appendix 4).

Section 217. (Reserved)

Section 218. Ineligible Work

The term "Ineligible Work" means the performance of any or more of the following work:

- a) Cleanup of lead based paint ("LBP") and asbestos containing materials ("ACM") incorporated into building materials in their original location.
- b) Cleanup of pesticides and herbicides applied in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and its predecessors including, but not limited to, chlordane applied as a termiticide to wooden structures and their foundations.
- c) Management and off-site disposal of contaminated soil or solid waste excavated or generated during the course of Redevelopment Activity within any Site within the ACES for which a Regulatory Closure determination has been previously approved for a completed cap/cover remedial action by the appropriate environmental regulatory agency or agencies.
- d) Additional remediation necessary to implement a change in land use from the land uses set forth in the Reuse Plan.
- e) Management and disposal of construction and demolition debris created in the course of redevelopment activity.
- f) Clean up of contaminants, within existing buildings and structures, that have not been released into the environment from; except the following shall not be Ineligible Costs: removal of liquids, solids, gases, sediments, and/or sludges from oil/water separators and other equipment and containment vessels within or beneath structures to the extent the equipment and vessels are not reasonably discoverable by visual inspection during a walk-through.
- g) Cleanup of background levels of chemicals as defined by the environmental regulatory agencies previously described in sub-item (c.) and the Government.
- h) Non-cleanup environmental compliance activities relating to redevelopment/construction following conveyance (e.g., compliance with air quality permit requirements for control of fugitive dust emissions that are not contaminated with hazardous substances or petroleum and the National Pollutant Discharge Elimination System ("NPDES") stormwater discharge permit requirements regulating excavation/disturbance of soil that is not contaminated with hazardous substances or petroleum).
- i) Any redevelopment, reconstruction, alteration, repair, or replacement of any "initial" cap/cover containment remedial action constructed pursuant to a ROD.
- j) Any other work or activity that is not related to: (1) achieving "Regulatory Closure" for releases of hazardous substances or petroleum within the ACES or (2) performing associated "Long-term Obligations".
- k) Reimbursement for Regulatory Enforcement Activities.

The term Redevelopment Activity means activities undertaken after the Effective Date of this Agreement in furtherance of the development of the property, including, but not limited to, construction of roads, utilities, and structures and demolition and/or removal of "hardscape" such as roads, sidewalks, and building foundations.

### Section 220. Reuse Plan

The term "Reuse Plan" means the Department of Housing and Urban Development-("HUD") approved Redevelopment Plan for the Hunters Point Naval Shipyard, approved by the Mayor and Board of Supervisors for the City of San Francisco in July of 1997 in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.).

### Section 221. Reasonably Expected Environmental Conditions

The term "Reasonably Expected Environmental Conditions" means those environmental conditions that can be reasonably expected in consideration of the specific sources of the Known Conditions, customary uses on the ACES associated with Navy operations and resulting environmental conditions. By way of example and not limitation, whether an environmental condition may be reasonably expected or not is illustrated as follows: Environmental conditions that are reasonably expected include (i) the concentration of a contaminant at a site is greater than the concentration for that respective contaminant identified at the site in Appendix 3, (ii) a contaminant at a site is, based upon the state of scientific knowledge at the time that this Agreement is executed, a scientifically-accepted "break-down" constituent of, or associated with, a contaminant identified in Appendix 3 as being present at that respective site, (iii) the physical extent of a contaminant at a site is greater than the extent of that contaminant identified in Appendix 3 as being present at that respective site

### Section 222. Area Covered by Environmental Services

The term "Area Covered by Environmental Services" or "ACES" means that area identified on the map in Appendix 2.

### Section 223. Unexploded Ordnance/ Munitions Explosive Concern

The term "Unexploded Ordnance" or "UXO" means Military Munitions that have been fired, dropped, launched, projected, or otherwise placed, abandoned or disposed of in such manner as to constitute a hazard to military or non-military operations, installations, personnel, or material and remain unexploded either by malfunction, design, or any other cause.

The term "Military Munitions" means all ammunition products and components produced or used by or for DOD or the United States Armed Services for national defense and security, including military munitions under the control of DOD, the United States Coast Guard, the United States Department of Energy ("DOE") and National Guard personnel. The term "Military Munitions" includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries used by DOD components, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term "Military Munitions" does not include wholly inert items and nonstandard explosive devices made from either military or non-military materials by nonmilitary personnel. However, the term "Military Munitions" does include non-nuclear components of nuclear devices managed under DOE's nuclear weapons program after all required sanitization operations under the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§2011 et seq., have been completed.

### Section 225. Navy Obligations

The term "Navy Obligations" means the obligations of the Navy as set forth in Section 302 hereof.

### Section 226. Regulatory Oversight

The term Regulatory Oversight includes the following services provided by the EPA, DTSC, the Water Board, California Department of Public Health or other regulatory agency which are considered an allowable cost under this Agreement:

Technical review of documents or data;

Identification and explanation of state applicable or relevant and appropriate requirements (ARARs);

Site visits other than enforcement inspections;

Technical Review Committee (TRC) or Restoration Advisory Board (RAB) participation;

Administration of the Cooperative Agreement

Technical review and comment on all documents and data regarding DoD prioritization of sites;

Determination of scope and applicability of agreements, excluding any litigation costs against the U.S. Government;

Independent quality assurance/quality control samples.

### Section 227. Regulatory Enforcement Activities

In accordance with 10 U.S.C. 2701(d)(3), regulatory enforcement costs are not reimbursable under this Agreement. The term "Regulatory Enforcement Activities" includes:

- 1) Activities associated with the City taking, or preparing to take, enforcement actions against third parties for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety or alleged violations of land use restrictions set forth in quitclaim deed(s) or Covenants to Restrict Use of the Land on the ACES; or
- 2) Activities associated with EPA, DTSC, the Water Board, California Department of Public Health, or other State or Federal regulatory agency taking, or preparing to take, enforcement actions against the City or its contractors or agents for alleged violations of laws, regulations, or enforceable agreements associated with environmental protection, public health or safety; or
- 3) Activities associated with the City complying with land use restrictions set forth in quitclaim deed(s) or Covenants to Restrict Use of the Land or related conveyance agreement on the ACES.

Section 228. Grants Officer

The Navy's Grants Officer is the Director of Acquisition, NAVFACENGCOM and is the only authorized Government agent who can make changes and obligate funds under this ETCA.

### Article III OBLIGATIONS OF THE PARTIES

Section 301. Obligations of the Authority

- A. In consideration of the Navy's agreement to reimburse the Authority for costs allowable, in accordance with provisions of Title 32 of the Code of Federal Regulations and applicable Office of Management and Budget ("OMB") Circulars, in the amount specified in Section 302.A below for performing the Environmental Services, the Authority assumes responsibility for the Environmental Services to address Known Conditions, Reasonably Anticipated Environmental Conditions, and Unknown Insured Conditions in accordance with, and subject to, the terms of this Agreement. Subject to the provisions of Sections 302.A hereof, the Authority agrees that it shall cause to be performed the necessary Environmental Services even if the costs associated therewith exceed the funds provided by the Navy hereunder. The Authority's obligation to perform Environmental Services is expressly conditioned upon the Navy providing funding for performing the Environmental Services in accordance with Section 302.A hereof. However, to the extent that the Navy pays a portion of the funding set forth in Section 302.A hereof, but fails to pay the full amount set forth in that Section, or in the event that the Agreement terminates pursuant to Section 1003 hereof, the Authority's obligations shall be limited to only the portion of Environmental Services which have been performed by use of the funds actually provided by the Navy or the insurer as set forth in Section 712.B hereof. These conditions shall be subject to dispute resolution pursuant to Section 1001 hereof. The Authority shall make reasonable progress toward performing Environmental Services. The Authority shall conduct audits and shall provide performance and financial reports to the Navy in accordance with Section 301.C below. The Authority shall cause the performance of the Environmental Services in a manner that will not unreasonably delay the Navy's performance of its obligations under Section 302 hereof.
- B. The Authority shall indemnify the Navy pursuant to the terms of Section 711.C hereof.
- C. Non-Federal Audits, Performance Reporting & Financial Reports.
  - (1) The Authority is responsible for obtaining annual audits in accordance with the Single Audit Act Amendments of 1996 (31 USC 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations". The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. The costs of audits made in accordance with this section are allowable charges to this Agreement.
  - (2) The Authority is responsible for assuring compliance with applicable Federal requirements and that performance goals are being achieved. In accordance

with 32 CFR 33.40, the Authority shall submit annual performance reports to the Navy.

- (3) In accordance with 32 CFR 33.41, the Authority shall submit annual financial status reports to the Navy.
- D. The Authority shall provide the Navy notice within thirty (30) calendar days of receiving notice by federal or local regulators, or other third parties, of the existence of any condition at the ACES that suggests that an action is necessary for which the Navy is responsible under this Agreement. If the Authority is served with a complaint or written notice by the federal, state or local regulators, the Authority shall provide the Navy with a copy of such document no later than seven (7) calendar days following the service of such document.
- E. Within thirty (30) calendar days of receiving actual notice of any condition at or affecting the ACES that the Authority discovers, for which the Navy is responsible under Section 302 hereof, the Authority shall notify the Navy of such conditions. The exception to this duty is that the Authority shall notify the Navy of the discovery of any UXO, biological warfare agents, or radiological or chemical warfare agents within twenty-four (24) hours of any such discovery. The parties shall, within a reasonable period of time after such notification, meet and confer regarding the terms on which the Navy may return to conduct any additional remedial action found to be necessary or provide funds to the Authority or the Authority's contractors in amounts sufficient to take any necessary actions required by CERCLA.
- F. Notwithstanding the provisions of the preceding Section 301.E hereof, but subject to Section 401 hereof, the Authority shall have the right, but not the duty, to take or cause to be taken the following actions within the ACES with respect to Navy-Retained Conditions:
- (1) Investigation Activities. Any activity necessary to determine the existence, nature, character and extent of conditions that may constitute Navy-Retained Conditions.
- (2) The Authority shall notify the Navy as soon as practicable whenever the Authority takes or causes to be taken any action under Section 301.F.(1) hereof. If the Navy disputes an Authority action taken under Section 301.F.(1), the Navy may initiate dispute resolution procedures under Section 1001 hereof.
- G. If the Authority discovers a condition in the ACES that the Authority reasonably believes is a Navy-Retained Condition, the Authority shall seek to determine whether such condition is in fact a Navy-Retained Condition before incurring such costs or obligations. If, despite using its best efforts to avoid incurring such costs, the Authority incurs costs or obligations with respect to a Navy-Retained Condition, the Authority may seek reimbursement from the Navy, subject to Section 401, hereof, and the dispute

resolution provisions of Section 1001 hereof. Nothing in this Agreement shall be construed as authorizing the Authority to seek reimbursement from the Navy for costs solely associated with the initial investigation needed to determine whether a newly discovered condition is properly categorized as a Known Condition, Unknown Condition, or Navy-Retained Condition. Subject to Section 401, hereof, and the dispute resolution process as set forth in Section 1001, if said condition is determined to be in fact a Navy-Retained Condition, the Authority's reasonable investigation costs may be reimbursed.

- H. The Authority shall provide to the Navy all information obtained or developed by the Authority with respect to any Navy-Retained Conditions that the Authority discovers.
- I. The Authority shall obtain the Environmental Insurance Policies, and other insurance required, as described in Section 712, herein.

### Section 302. Obligations of the Navy

- A. The maximum funding obligation of the Navy to the Authority for the term of this Agreement is \$\_\_\_[TBD X]\_\_\_\_\_ and shall be provided to the Authority in \_\_\_\_ advance payments. The funding obligation set forth in this paragraph is inclusive of the maximum allowable cost of \$ [TBD Y] which represents the limit of the funds provided herein and to be expended under this Agreement with respect to any cap/cover containment remedial action constructed by the Authority. The first payment shall be made within X (X) days after recordation of the deed conveying title to the Early Transfer Property from the Navy to the Authority [and subsequent payments shall me made on ...]. The Navy's obligation to pay hereunder is subject to the availability of appropriated funds and this payment schedule shall not be interpreted to require obligations or payments by the Navy in violation of the Anti-Deficiency Act (31 U.S.C. 1341).
- B. Within a reasonable time after the Authority has provided the Navy with (1) the proper documentation establishing that Regulatory Closure has been obtained for the ACES, (2) documentation of approval of "operating properly and successfully" demonstration as approved by the Administrator of EPA if necessary in accordance with 120(h)(3)(B) and (3) a written request from the Authority to issue a warranty, the Navy shall issue to the Authority the warranty required under CERCLA, Section 120(h)(3)(C)(iii). The Authority shall bear the costs of preparing any new legal descriptions for the warranty to be recorded.
- C. Within a reasonable period of time after receiving any notice from the Authority under Section 301.D or 301.E hereof, the Navy shall confer with the Authority with regard to the Navy-Retained Conditions at issue. The exception to these terms is that the Navy shall confer with the Authority as soon as reasonably possible after receiving any notice concerning the presence of UXO, biological warfare agents, chemical warfare agents or Radiological Materials. The Navy and the Authority, in consultation with the

appropriate regulatory agencies, shall endeavor to agree to any necessary actions to be taken by the Navy with respect to the Navy-Retained Conditions. Alternatively, the Parties shall attempt to agree on the funds to be provided by the Navy to the Authority to enable the Authority to take such actions. If the Parties cannot agree whether an environmental condition constitutes a Navy-Retained Condition, or disagree about the action required in response to any such condition under CERCLA, the matter may be submitted to dispute resolution under Section 1001. Consistent with the provisions of above Section 301.F, the Authority may take any actions deemed necessary, and seek reimbursement from the Navy for the costs associated with such actions.

D. Any Navy liability for the death of or injury to any person, or the loss of or damage to any property, caused by Navy use of the ACES shall be determined in accordance with the applicable provisions of the Federal Tort Claims Act (28 U.S.C. Section 2671, et seq., as amended), or as otherwise provided by law.

### Article IV FUNDING LIMITATION AND BUDGETING

Section 401. Navy's Funding Limitation

The maximum Navy funding obligation for the Environmental Services to be performed by the Authority under this Agreement is \$[TBD X]. This funding limitation includes the amount of \$[TBD Y] for which the Navy considers the maximum allowable cost reimbursable under this Agreement for any cap/cover containment remedial action constructed by the Authority. Except as may otherwise be provided in Section 302.C above, the Navy will not pay any Environmental Service costs that exceed the amount described in Section 302.A above. The Navy's obligation to pay or reimburse any costs hereunder is subject to the availability of appropriated funds. Nothing in this agreement shall be interpreted to establish obligations or require payments by the Navy in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 et seq. The Authority incurs any additional costs, including any costs for services or activities determined to be defined as Ineligible Work, at its own risk. Any statements in this Agreement regarding the Authority's ability to seek reimbursement for any such additional costs, or to negotiate any additional amounts to be paid, do not create any Navy obligation to pay such costs or amounts.

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### Article V PAYMENT SCHEDULE

Section 501. General

The Authority shall be paid in accordance with Section 302.A above.

Section 502. Payments

- A. The amount provided by the Navy in accordance with Section 302.A is an advance payment to the Authority made in accordance with the advance payment requirements of 32 CFR §33.21(c), as follows:
- (1) The Authority shall maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the funds and their disbursement by the Authority.
- (2) Within a reasonable period of time after receiving the payment from the Navy, the Authority shall deposit all such funds with an independent third party payee such as an escrow agent, title company, or insurer. Such independent third party payee shall be responsible for making all payments to the party or parties, including a subsequent transferee and/or environmental contractor, with whom the Authority enters into an agreement to supervise the performance of the Environmental Services. Funds shall be considered disbursed by the Authority when the following has occurred:
  - (i). The Authority does not retain possession of the funds;
  - (ii). The Authority cannot get the funds back upon demand (this does not include allowable costs incurred by the Authority for which the Authority requests proper reimbursement from the independent third party payee);
  - (iii). The independent third party payee is an independent stakeholder for the Authority and the party or parties with whom the Authority enters into an agreement to supervise the performance of the Environmental Services and not the agent of the Authority;
  - (iv). The Authority receives something in exchange for the transfer of funds to the independent third party payee, such as a contractual promise to hold the funds and make payments in accordance with specified procedures.
- (3) Any agreement by the Authority with an independent third party payee must also include the above provisions and satisfy the requirements of 32 CFR §33.21(c).
- (4) Interest. Any interest earned on the advance payment by the Authority prior to the disbursement of those funds in accordance with Section 502.A. above must be returned to the Navy in accordance with 32 CFR §33.21(h)(2)(i). However, any interest

earned on those funds after disbursement from the Authority to the independent third party payee are considered funds to be utilized for the purposes of this Agreement.

### Article VI PAYMENT

Section 601. General

Within X (X) days after recordation of the deed conveying title to the ACES Property from the Navy to the Authority, the Navy shall make the first payment to the Authority [and subsequent payments within ....] as provided in this Agreement and in compliance with the provisions of 32 CFR Part 33, OMB Circular A-87 and OMB Circular A-102.

Section 602. Relation to Prompt Payment Act.

This Agreement is not a contract as defined under OMB Circular A-125, which implements the Prompt Payment Act of 1982 (31 U.S.C. Section 3901, *et seq.*). Accordingly, the Navy is not liable to the Authority for interest on any untimely payments under this Agreement.

Section 603. Direct Navy Payment of Authority Obligations

The Navy is not in privity with, and shall not directly pay any Authority contractors, employees, vendors, or creditors for any costs incurred by the Authority under this Agreement. The Navy assumes no liability for any of the Authority's contractual obligations that may result from any Authority performance of duties under this Agreement. The Navy assumes no liability hereunder for any Authority contractual obligations to any third parties for any reason. The Authority hereby agrees to defend and hold the Navy harmless from any such liabilities.

### Article VII GENERAL PROVISIONS

### Section 701. Term of Agreement

Unless terminated under Section 1003 below, this Agreement shall remain in effect until Regulatory Closure within the ACES has been obtained. Only the following three terms of this Agreement shall survive such termination, and then only if the Agreement is not terminated as a result of the Navy's failure to provide the funds specified in Sections 302.A and 302.B above or other Navy default: (i) Authority requirements to maintain compliance under the CERCLA RODS and CAPs, and to comply with any applicable Long-Term Obligations; (ii) the Authority's and the Navy's obligations under Section 711 below (including the relevant provisions of Sections 101, 102, 301.A, 302, 703, 706, 707, and 801 cross-referenced in Section 711), and; (iii) Section 715.

### Section 702. Amendment of Agreement

Only a written instrument signed by the parties hereto may amend this Agreement.

### Section 703. Successors and Assigns

All obligations and covenants made by the parties under this Agreement will bind and inure to the benefit of any successors and assigns of the respective parties, whether or not expressly assumed by such successors or assigns, and may not be assigned in whole or in part without the written consent of the other party.

### Section 704. Entire Agreement

This Agreement constitutes the entire Agreement between the parties. All prior discussions and understandings on this matter are superseded by this Agreement.

### Section 705. Severability

If any provision of this Agreement is held invalid, the remainder of the Agreement will continue in force and effect to the extent not inconsistent with such holding.

### Section 706. Waiver of Breach

No Party shall be deemed to have waived any material provision of this Agreement upon any event of breach by the other party, and no "course of conduct" shall be considered to be such a waiver, absent the waiver being documented in a mutually signed writing.

### Section 707. Notices

Any notice, transmittal, approval, or other official communication made under this Agreement will be in writing and will be delivered by hand, facsimile transmission, electronic mail, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

Director
Department of the Navy
Base Realignment and Closure Management Office
1455 Frazee Road, Suite 900
San Diego, CA 92108

Section 708. Conflict of Interest

The Authority shall ensure that its employees are prohibited from using their positions for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or others.

### Section 709. Access to and Retention of Records

The Authority shall afford any authorized representative of the Navy, DOD, the Comptroller General, or other officially concerned Federal Government agency access and the right to examine all Authority records, books, papers, and documents related to the Authority's performance under this Agreement. This includes all records in automated forms ("Records") that are within the Authority's custody or control, and that relate to its performance under this Agreement. This right of access excludes any attorney-client communications, attorney work product, or any other legally privileged documents. The Authority shall retain required records intact in their original form, if not the original documents, or in another form if the Navy approves. Such approval shall not be unreasonably withheld. Authority record retention requirements shall extend for at least three (3) years following the completion or the termination of this Agreement. The Authority shall allow the Navy access to the Authority's records during normal business hours. The Navy will give the Authority seventy-two (72) hours prior notice of its intention to examine the Authority's records, unless the Navy determines that more immediate entry is required by special circumstances. Any such entry shall not give rise to any claim or cause of action against the Navy by the Authority or any officer, agent, employee, or contractor thereof.

### Section 710. Change of Circumstances

Each party will promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect such party's ability to perform this Agreement.

### Section 711. Liability and Indemnity, Waiver and Release

### A. The Authority's Obligations and Limited Waiver of Statutory Rights

- (1) In consideration of the Navy's payment to the Authority under Section 302 above, and the other applicable terms of this Agreement, the Authority agrees that it shall, upon receipt of the first payment of the grant award, indemnify and hold the Navy harmless for any of the following:
- (a) any response cost claims for Known and Reasonably Expected Environmental Conditions in the ACES, including hazardous substances, pollutants and contaminants, petroleum, and petroleum derivatives, but only to the extent that such response cost claims result from and are associated with Known Conditions; Reasonably Expected Environmental Conditions; or activities, actions, contaminants and wastes set forth above in the list of "Ineligible Work" as set forth in Section 218 above. The Authority's indemnification obligation under this subparagraph (1)(a) shall not apply to Navy Retained Conditions and Uninsured Unknown Conditions;
- (b) oversight costs for any remedy implemented by the Authority to the extent that the Authority is responsible for any such costs under this Agreement;
- (c) all claims for personal injury or property damage to the extent caused by the Authority or its contractors in the course of performing the Environmental Services;
- (d) all natural resource damage claims pursuant to 42 U.S.C. Section 9607(a)(4)(C) pertaining to releases of hazardous substances, but only to the extent that such damages were caused, or contributed to, by the actions of the Authority, its contractors or its successors in interest;
- (e) all costs arising from any faulty performance of the Environmental Services;
- (f) all costs of additional remediation required on or within the ACES as a result of a change in land use from that upon which the initial remedial action selection decision was based when Regulatory Closure was completed;
- (g) all costs associated with the correction of any failure of any Navy-selected remedy implemented by the Authority, but only to the extent such costs are

directly attributable to the poor workmanship or negligence of the Authority or its contractors in the performance of said implementation;

- (h) all costs arising from the correction of any failure of any remedy selected and implemented by the Authority; and
- (i) all costs arising from or associated with claims addressed in the Waiver, Release and Covenant Not to Sue provisions set forth in Section 711.A(7) below.
- (2) With regard to the ACES, the Parties agree that the Authority has provided financial assurances reasonably acceptable by the Navy to meet the requirements of 42 U.S.C. Section 9620(h)(3)(C)(ii).
- (3) Except as otherwise expressly provided by this Agreement, this Agreement shall not be construed to limit, expand or otherwise affect any right that the Authority may have, in the absence of this Agreement, to take legal action to require the Navy to act with respect to Navy Obligations, or to seek damages resulting from the Navy's performance or failure to perform any actions with respect to Navy Obligations. Except as otherwise expressly provided by this Agreement, this Agreement shall also not be construed to limit, expand or otherwise affect any right that the Navy may have, in the absence of this Agreement, to take legal action against the Authority.
- (4) Nothing in this Section creates rights of any kind in any person or entity other than the Navy and the Authority.
- (5) The provisions of this Section shall be included in any deed or lease from the Authority of all or any portion of the subject property and shall be binding upon any successor in interest.
- (6) The Authority and the Navy agree that the Environmental Services to be caused to be performed by the Authority in accordance with the terms of this Agreement does not include any work relating to nor is the Authority responsible for indemnification of the Navy for any work related to Navy Retained Conditions."
- (7) Waivers, Releases, and Covenants Not to Sue. In consideration of the Navy's payment to the Authority under Section 302 above, and the other applicable terms of this Agreement and as an administrative settlement of past, present, and future claims or causes of action ("claims"), the Authority, upon receipt of the first payment of the grant award, waives, releases, and covenants not to sue or otherwise pursue any cost, claim or liability against the Government relating to:
- (a) Any cleanup, response or corrective action, property damage, or personal injury incurred by the Authority associated with or as a result of Known Conditions; Reasonably Expected Environmental Conditions; Insured Unknown Conditions; or activities, actions, contaminants and wastes set forth above in the list of "Ineligible Work"; and

- (b) Any consequential damages related to development delays caused by the Navy's performance of, or failure to perform, investigation or remediation activities with respect to Navy Obligations; and
- (c) Any cost of redeveloping, reconstructing, altering, repairing, or replacing any "initial" cap/cover or containment remedial action constructed pursuant to a ROD, whether or not such activity is addressed in subsequent CERCLA RODS or CAPs, a ROD Amendment, an Explanation of Significant Differences ("ESD"), or through a review and approval process by the United States of America and/or State of California pursuant to a Risk Management Plan or CERCLA IC review and approval procedure.

### Section 712. Liability and Insurance

- A. The Authority shall either self-insure, or carry and maintain general liability insurance, to afford protection with limits of liability in amounts not less than \$5,000,000.00 in the event of bodily injury or death to any number of persons in any one accident.
- B. The Authority agrees to bind Environmental Insurance Policies as shown in Appendix 4.

[Note: Such policies will provide that the insurer waive its right of subrogation against the Navy, its officers, agents, or employees. In no circumstances will the Authority be entitled to assign to any third party any rights of action that the Authority may have against the Navy under this Agreement, subject to the provisions of Section 711.A above. The Navy shall be listed as an Additional Insured with respect to the coverage provided in any Environmental Insurance Policy or Policies. The Navy shall not otherwise be deemed an insured of, nor have any rights with respect to, any other grant of coverage under the Environmental Insurance Policies.]

- C. The Authority will either self-insure or carry and maintain worker's compensation or similar insurance in the form and amounts required by law. If an insurance policy is obtained, any such insurance policy will provide a waiver of subrogation of any claims against the Navy, its officers, agents, or employees. In no circumstances will the Authority be entitled to assign to any third party rights of action that the Authority may have against the Navy.
- D. General Liability Policy Provisions: All general liability insurance which the Authority carries or maintains, or causes to be carried or maintained, under this Section 712 will be in such form, for such amounts, for such periods of time and with such insurers as the Navy may approve. Such Navy approval shall not be unreasonably withheld or delayed. All policies issued for general liability insurance required by this

Agreement will provide that no cancellation will be effective until at least thirty (30) days after the Navy receives written notice thereof. Any such policy shall also provide a waiver of subrogation of any claims against the Navy, and its officers, agents, or employees. In no circumstances will the Authority be entitled to assign to a third party any rights of action which the Authority may have against the Navy. The Navy acknowledges and accepts the Authority's self-insurance coverage for general liability, worker's compensation, or for any similar coverage.

E. Delivery of Policies: The Authority will provide the Navy with a certificate of insurance evidencing the insurance required for the Authority. At least thirty (30) days before any such policy expires, the Authority shall also deliver to the Navy a certificate of insurance evidencing each renewal policy covering the same risks.

### Section 713. Reports

To assure that the Navy will receive from the Authority the appropriate documentation necessary for the Navy to execute the CERCLA covenant, the Navy may request that the Authority provide additional information concerning the environmental condition of the ACES. As soon as possible after any such request is made, if the Authority can reasonably obtain and release such information, the Authority shall provide the Navy access to any documents containing such requested information. In any event, the Authority agrees to provide the Navy such access within a reasonable time of the Navy's information request.

### Section 714. Officials Not to Benefit

The Authority acknowledges that no member or delegate to the United States Congress, or Resident Commissioner, shall be permitted to share in any part of this Agreement, or receive any benefit that may arise therefrom.

### Section 715. Representations

### A. The Navy represents that:

- (1) it is fully authorized to enter into this Agreement;
- (2) the Authority may rely on the data provided to the Authority or its contractors by the Navy or the Navy's contractors for purposes of performing the Environmental Services and making any disclosures required under applicable law; and
- (3) the information provided to the Authority by the Navy hereunder fairly and accurately represents the Navy's actual knowledge of the nature and extent of contamination within the ACES.

### B. The Authority represents that:

- (1) it is a local reuse organization approved by the City in accordance with Section 2824 (a) of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510), as amended, and is fully authorized to enter into this Agreement; and
- (2) (a) it enters into this Agreement cognizant of the requirements and prohibitions set forth in the Anti-Deficiency Act (ADA), and that;
  - (b) any provision of this Agreement that states or implies that the Navy will reimburse the Authority for any costs incurred, or that the Navy will perform any actions with respect to Navy Obligations, are wholly subject to the ADA.

### Section 716. Excess Funds

Funds, as provided for in Section 302 and Section 502 above, are only to be expended for the purposes for which they were awarded. In accordance with the procedures outlined in 32 CFR 33.50, if any funds paid to the Authority in excess of the amount to which the Authority is finally determined to be entitled remain, upon written demand by the Navy, the Authority must immediately refund to the Navy those additional excess funds.

Section 717. Reserved.

### Article VIII APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law

This Agreement is entered into incident to the implementation of a Federal program. Accordingly, as it may affect the rights, remedies, and obligations of the

United States. Therefore, this Agreement will be governed exclusively by, and be construed only in accordance with Federal law.

### Section 802. Governing Regulations

This Agreement shall be enforced and interpreted in accordance with the Federal laws and regulations, directives, circulars, or other guidance cited in this Agreement. This Agreement will be administered according to the following authorities: DoD Directive 3210.6; the Uniform Administrative Requirements for Grants and Cooperative Agreements; other applicable portions of Title 32 of the Code of Federal Regulations, and; pertinent OMB Circulars. If the provisions of this Agreement conflict with any such authorities, the authorities will govern.

### Section 803. Environmental Protection

Each Party agrees that its performance under this Agreement shall comply with all applicable state, Federal and local environmental laws and regulations.

### Article IX PROCUREMENT

### Section 901. Authority Contracts

The Authority's acquisition of goods and services to perform this Agreement will comply with the instructions and procedures contained in 32 CFR Section 33.36(b)(1) through (12). The Authority must not contract with any party that is debarred, suspended, or otherwise excluded from, or ineligible for, participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension," and applicable DOD regulations thereunder.

### Section 902. Preference for Local Residents

- A. Preference is allowed in entering into contracts with private entities for services to be performed at a military installation that is affected by closure or alignment under a base closure law. The Secretary of Defense may give preference, consistent with Federal, State, and local laws and regulations, to entities that plan to hire, to the maximum extent practicable, residents of the vicinity of such military installation to perform such contracts. Contracts for which the preference may be given include contracts to carry out environmental restoration activities or construction work at such military installations. Any such preference may be given for a contract only if the services to be performed under the contract at the military installation concerned can be carried out in a manner that is consistent with all other actions at the installation that the Secretary is legally required to undertake.
- B. Definition- In this section, the term `base closure law' means the following:
  - (1) The provisions of title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).
  - (2) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).
- C. Applicability Any preference given under subsection (A) shall apply only to contracts entered into after the base closure law was enacted.

### Article X TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1001. Dispute Resolution

- A. Except as otherwise provided in this Agreement, these dispute resolution provisions are the sole recourse of any Party with respect to disputes and the enforcement of any terms of this Agreement.
- B. A dispute shall be considered to have arisen when one Party sends the other Party written notice of such dispute. Such written notice will include, to the extent available, all of the following information: the amount of monetary relief claimed or the nature of other relief requested; the basis for such relief, and; any documents or other evidence pertinent to the claim.
- C. If a dispute arises under this Agreement, the Parties agree to attempt to resolve the dispute at the staff level. The Parties shall confer at the staff level within fifteen (15) days after a notice of dispute is received. Should staff-level discussions not resolve the dispute within such fifteen (15) day period (or longer, if agreed to by the Parties), the Parties agree to elevate the dispute to designated mid-level management. Mid-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. If Mid-level management cannot timely resolve the dispute, the Parties agree to then raise the issue with their respective senior-level management. Senior-level management shall then attempt to resolve the dispute within thirty (30) days (or longer, if agreed to by the Parties) after receiving the dispute. Each Party shall have the discretion to determine the person(s) to represent it at any meeting convened under this section.
- D. If the dispute cannot be resolved after exhausting the remedies under Section 1001 C. above, the dispute shall be appealed to the Director of the Base Realignment and Closure Office at the address indicated in Section 707 above. Such appeal must be written, and contain all of the documentation and arguments necessary for a decision. The Director shall render a decision in a timely manner. If the Authority disagrees with the Director's decision, the Authority may, by providing notice to the other Party, pursue whatever remedies that the Authority may have available at law or in equity.
- E. To the extent that there is a conflict between the Dispute Resolution provisions or process set forth herein and any dispute resolution provisions or process contained in the Federal Facility Agreement applicable to Hunters Point Naval Shipyard (FFA), the dispute resolution provisions and process of the FFA shall control.

Section 1002. Enforcement

Either party may enforce this Agreement according to its terms. Without limiting either party's enforcement rights, the Navy's enforcement rights for material breach by

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the Authority, in accordance with the terms of 32 CFR Section 33.43, Enforcement, shall include:

- A. Temporarily withholding cash payments pending correction of the deficiency by the Authority or Sub-grantee or more severe enforcement action by the awarding agency;
- B. Disallowing (denying both use of funds and matching credit for) all or part of the cost of the activity or action that is not in compliance;
- C. Wholly or partly suspending or terminating the current award for the Authority's or the Sub-grantee's program. Any award termination will be conducted under Section 1003 below.
- D. Withholding further awards under this Agreement; and
- E. Taking other remedies that may be legally available.

Section 1003. Termination

- A. This Agreement may terminate by its own terms under Section 701 above, or by a party under this Section 1003.
- B. Reserved
- C. Reserved.
- D. If a Party materially breaches this Agreement, the non-breaching party, to preserve its right to terminate, must provide the breaching party with a notice of intent to terminate. The breaching party shall have thirty (30) days to cure the breach, unless a longer period is agreed upon, in writing, by the parties. If the breaching party fails to cure the breach within the thirty (30) day (or longer, if agreed upon) period, then the non-breaching party may, in its discretion, terminate this Agreement no sooner than sixty (60) days after the cure period has expired. The existence of a material breach shall be finally determined under the dispute resolution procedures specified in Section 1001 above.
- E. If this Agreement is terminated for reasons other than those set forth in Section 701 above, the Authority shall immediately:
  - (1) Stop work;
- (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities;
  - (3) Terminate all subcontracts;

- (4) With approval or ratification to the extent required by the Navy, settle all outstanding liabilities and termination settlement proposals arising from the termination of any subcontracts; any such approval or ratification will be final;
- (5) Take any action that may be necessary to protect human health or the environment against imminent and substantial endangerment thereto, or to protect and preserve any Navy-owned property at the ACES, as the Grant Officer may direct; and
- (6) Return or cause to be returned to the Navy any unexpended funds held by the Authority or any third party account holder.

The Authority agrees to insert such provisions in its contracts, and to require that such provisions be placed in any subsequent subcontracts between the Authority's contractors and their subcontractors, so as to effect the provisions above.

- F. If this Agreement is terminated under this Section 1003, the status of the parties with respect to environmental conditions at the ACES shall revert to as the status that existed immediately preceding the effective date of this Agreement.
- G. A party's right to terminate, and any determination of funds available for reimbursement, under this Section 1003 shall be subject to the dispute resolution procedures in Section 1001 above.

### Section 1004. Effects of Suspension and Termination

- (a) Any costs to the Authority resulting from obligations incurred by the Authority during a suspension, or after termination of payments, are not allowable unless the Navy expressly authorizes them in the notice of suspension or termination, or subsequently. Any other Authority costs incurred during suspension or after termination which are necessary and not reasonably avoidable are allowable only if:
- (1) the costs result from obligations which were properly incurred by the Authority before the effective date of suspension or termination, are not in anticipation of it, and, in the case of a termination, cannot be cancelled; and
- (2) the costs would be allowable if the Agreement were not otherwise suspended or expired at the end of the funding period in which the termination takes effect.
- (b) The enforcement remedies specified in this section do not relieve the Authority or its subcontractors from compliance with 32 CFR Section 33.35, Subpart C, or 32 CFR Part 25, including the restrictions on entering into a covered transaction with any party which is debarred, suspended, or is otherwise excluded from, or ineligible for participation in, Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

### Article XI LEGAL AUTHORITY

Section 1101. Legal Authority

The parties hereby represent and warrant that they are under no existing or reasonably foreseeable legal disabilities that would prevent or hinder them from fulfilling the terms and conditions of this Agreement. The parties will promptly notify each other of any legal impediment that arises during the term of this Agreement that may prevent or hinder the party's abilities to perform its duties under this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties to this Agreement, by their authorized representatives, hereby cause this Agreement to be executed.

# SAN FRANCISCO REDEVELOPMENT AGENCY By \_\_\_\_\_\_ NAME: TITLE: Director Dated: THE UNITED STATES OF AMERICA By: \_\_\_\_\_ NAME: Mr. Robert Griffin TITLE: Assistant Commander for Acquisition, Naval Facilities Engineering Command Dated:

List of Appendices
[To be prepared by Navy. Will be provided in future draft.]

### **APPENDICES**

Appendix 1 Map of the Hunters Point Naval Shipyard

Appendix 2 Map of the ACES Appendix 3 Known Conditions

Appendix 4 Environmental Insurance Polices